



State of California
Employment Training Panel

Arnold Schwarzenegger, Governor

May 28, 2008

George Rawe, Director
Computer Tutor Business and Technical Institute
4306 Sisk Road
Modesto, CA 95356-9760

Dear Mr. Rawe:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET03-0205 for the period December 2, 2002 through December 1, 2004.

Enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our audit staff during the audit. If you have any questions, please contact me at (916) 327-5439.

Sincerely,

Original signed by:

Charles Rufo
Audit Director

Enclosure

SACRAMENTO CENTRAL OFFICE
1100 J Street, 4th Floor
SACRAMENTO, CA 95814
(916) 327-5640

N. HOLLYWOOD REGIONAL OFFICE
4640 Lankershim Blvd., Suite 311
NORTH HOLLYWOOD, CA 91602
(818) 755-1313

S.F. BAY AREA REGIONAL OFFICE
1065 East Hillsdale Blvd, Suite 415
FOSTER CITY, CA 94404
(650) 655-6930

SAN DIEGO REGIONAL OFFICE
5353 Mission Center Road, Suite 110
SAN DIEGO, CA 92108
(619) 686-1920

Computer Tutor Business and Technical Institute

Agreement No. ET03-0205

Final Audit Report

For The Period

December 2, 2002 through December 1, 2004

Report Published May 28, 2008

Charles Rufo, Audit Manager
Telephone: (916) 327-5439

Audit Staff: Margie Miramontes

Employment Training Panel
Audit Unit
1100 J Street FL 4
Sacramento CA 95814-2827

ET03-0205.fnl

TABLE OF CONTENTS

	<u>Page Number</u>
AUDITOR'S REPORT	
Summary	1
Background	2
Objectives, Scope, and Methodology	2
Conclusion	3
Views of Responsible Officials	3
Audit Appeal Rights	3
Records	4
 SCHEDULE 1 - Summary of Audit Results	 5
FINDINGS AND RECOMMENDATIONS	6
 <u>ATTACHMENTS</u>	
ATTACHMENT A - Appeal Process	
ATTACHMENT B - Table of Disallowed Trainees	

AUDITOR'S REPORT (continued)

Summary

We performed an audit of Computer Tutor Business and Technical Institute (Computer Tutor), Agreement No. ET03-0205, for the period December 2, 2002 through December 1, 2004. Our audit pertained to training costs claimed by the Contractor under this Agreement. Audit fieldwork was performed during the period June 19, 2006 through December 13, 2006, except for Finding No. 1, for which our report is dated February 5, 2007.

The Employment Training Panel (ETP) paid the Contractor a total of \$222,625. Our audit supported that \$216,775 is allowable. The balance of \$5,850 is disallowed and must be returned to ETP. The disallowed costs resulted from one trainee who did not complete the required 120-day retention period following training. In addition, we noted two administrative findings for ineligible training agreements with trainees and ineligible training topics found on attendance rosters.

AUDITOR'S REPORT (continued)

Background

Computer Tutor Business and Technical Institute (Computer Tutor), is a vocational business school that was established in 1986 in Stanislaus County. It is certified through the Bureau of Private Postsecondary and Vocational Education and has a history of providing new hire training and placement services.

This was the second ETP Agreement with Computer Tutor. The agreement planned to train 40 new-hire trainees to take courses in Business Skills and Computer Skills for placement into jobs as a Medical Office Clerk or Accounting Technician. Training ranged from 450 to 475 hours of class/lab instruction in customized training topics specific to each industry as identified by employers located in Stanislaus County, which is a high unemployment area within California.

This Agreement allowed Computer Tutor to receive a maximum reimbursement of \$240,500 for training 40 new-hire trainees. During the Agreement term, the Contractor placed 37 trainees and was reimbursed \$222,625 by ETP.

Objectives, Scope, and Methodology

The audit was performed in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. The financial statements of Computer Tutor were not audited. The audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that Computer Tutor complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Trainees received the minimum training hours specified in the Agreement.
- Trainees who earned at least \$9.12 per hour were employed continuously full-time with a participating employer for 90 consecutive days after completing training, and the 90-day retention period was completed within the Agreement term. A maximum of 10 trainees may earn between \$8.00 and \$9.11 per hour but must complete a retention period of 120 days after completion of training.

AUDITOR'S REPORT (continued)

- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of the required employment retention period.
- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion	As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$216,775 of the \$222,625 paid to the Contractor under this Agreement was allowable. The balance of \$5,850 is disallowed and must be returned to ETP.
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Views of Responsible Officials	The audit findings were discussed with Mr. George Rawe of the Computer Tutor Business and Technical Institute initially at an exit conference held on December 14, 2006. ETP Auditor subsequently performed additional research and telephone interview and notified Mr. Rawe of the remaining audit findings on February 5, 2007. The Contractor agreed to bypass the draft audit report.
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The issuance of your final audit report had been delayed by the audit unit. Therefore, ETP will waive the accrual of interest resulting from this audit for the disallowed costs beginning February 5, 2007, through the issue date of this Final Audit report.

Audit Appeal Rights	If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).
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AUDITOR'S REPORT (continued)

Records

Please note the ETP Agreement, Paragraph 5, requires you to ensure that ETP or its representative has the right, "...to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment from ETP to the Contractor, or the date of resolution of appeals, audits, or litigation, whichever is later."

Charles Rufo
Audit Director

Fieldwork Completion Date: December 13, 2006, except for Finding No. 1, for which our report is dated February 5, 2007.

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement ET03-0205 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

COMPUTER TUTOR BUSINESS AND TECHNICAL INSTITUTE
AGREEMENT NO. ET03-0205
FOR THE PERIOD
DECEMBER 2, 2002 THROUGH DECEMBER 1, 2004

	<u>Amount</u>	<u>Reference*</u>
Training Costs Paid By ETP	<u>\$ 222,625</u>	
Costs Disallowed:		
Post-Training Retention Requirement Not Met	\$5,850	Finding No. 1
Ineligible Training Agreements With Trainees	-	Finding No. 2
Ineligible Training Topics	<u>-</u>	Finding No. 3
Total Costs Disallowed	<u>\$ 5,850</u>	
Training Costs Allowed	<u><u>\$ 216,775</u></u>	

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Employment information for one Job No. 1 trainee shows the
Post-Training trainee did not complete the required 120-day post-training
Retention retention period. As a result, we disallowed \$5,850 in training costs
Requirement Not claimed for this trainee.
Met

The following criteria are applicable:

- Exhibit A, paragraph VII. A. of the Agreement states, “Each trainee must be employed full-time, at least 35 hours per week... for a period of at least ninety (90) days immediately following the completion of training... All trainees who are placed at a wage which is less than \$9.12 per hour must complete a retention period of 120 days after completion of training.”
- Title 22 California Code of Regulations (CCR), Section 4400(v) (3) states, “If a trainee voluntarily terminates his/her employment after the completion of training, but before the end of the applicable retention period, the contractor will be reimbursed for that trainee if that trainee is employed by another eligible employer for the applicable retention period... The retention with any subsequent employer must be within the term of the Agreement.

If after the completion of training and before the applicable retention period, the trainee has a break in employment necessitated by the Family Medical Leave Act [FMLA]... the trainee shall be deemed to have completed the retention period.”

Computer Tutor reported that Trainee No. 1 completed a post-training retention period from May 5, 2003, through September 5, 2003, and earned \$8.00 per hour. Trainee No. 1 was required to complete a 120-day retention period since the trainee earned less than \$9.12 per hour. However, the employer for Trainee No. 1 reported the trainee was terminated involuntarily on August 4, 2003. Since the trainee did not voluntarily terminate her employment during the retention period, subsequent employment is not applicable. Additionally, the trainee was not found to have a break in employment necessitated by FMLA, as Trainee No. 1 was terminated.

FINDINGS AND RECOMMENDATIONS (continued)

Contractor's Response	<p>The Computer Tutor representative stated Trainee No. 1 was "...terminated for attendance. She had attendance problems because of her injured ankle. She did not tell her employer of her injury for fear of termination. She was ignorant of the fact that she would have had protection if she notified her employer. The consequence of her ignorance resulted in termination for attendance on 8/4/2003. She was offered employment at the end of August [2003] with [another employer]. She was unable to start work due to pregnancy."</p>
Auditor's Comments	<p>ETP Auditor spoke with both a Human Resources Director and an Attorney from the employer of Trainee No. 1. The attorney notified ETP that they would not release the trainee's personnel information based on the signed trainee "ETP104 Authorization" form that was submitted to them. However, the Attorney and Human Resources Director stated they were unaware of any medical reasons for Trainee No. 1's work absences and stated that her termination from employment was not related to FMLA. This statement was also supported by the "Employment Verification Questionnaire" completed by the Human Resources Director which stated the trainee did not resign voluntarily.</p> <p>Additionally, during a "special review" of this trainee by the ETP Fiscal unit, they had been informed by Computer Tutor personnel that the trainee "was not terminated from her employment" during the retention period, which was found to be a false statement based on the above information. Thus, we have determined that ETP's guidelines for voluntary termination during the retention period and FMLA do not apply to this trainee and will be disallowed.</p>
Recommendation	<p>Computer Tutor must return \$5,850 to ETP. In the future, Computer Tutor should ensure that trainees meet post-training retention requirements prior to claiming reimbursement from ETP.</p>

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – Ineligible Training Agreements with Trainees

Computer Tutor requires each new-hire trainee enrolled in an ETP-funded Agreement to sign a 7-page “Enrollment Agreement” prior to the start of training. The terms of this Enrollment Agreement include requirements that are not in compliance with existing ETP Regulations, including transferring the responsibility of payment for training to the trainee if ETP does not pay for the training. As a result, Computer Tutor did not comply with Agreement requirements.

Title 22 California Code of Regulations, Section 4412.1 states in part that “...trainees being trained under a contract funded by the Panel cannot be charged for any training costs... The Panel recognizes that there is an inherent risk factor in implementing a new hire training program. This risk cannot be transferred to the trainees enrolled in that program in any manner, whether by reimbursable fee or otherwise. If the Panel determines any charges have been made to students which are not authorized by the Panel or statute, the Panel shall offset monies from any reimbursement due to the contractor, or if monies have been paid to the contractor, the Panel shall seek reimbursement for such funds...”

ETP Auditor identified Enrollment Agreements signed by the trainee and Contractor Representative for each of the 15 trainees sampled. Although many of the “student requirements” encourage full participation by a trainee to attend training, obtain employment, and remain employed for a specified time and hourly rate, other requirements exceed ETP Regulations. Each of the Enrolled Agreements state “If the third [party, i.e. ETP] does not pay you will be responsible for the unpaid charges, which amount to \$5,850 for the following fees, charges, and expenses: Registration Fee (\$75), Tuition (\$5,420) and Books/Supplies (\$355).”

Thus, Computer Tutor is making a trainee potentially liable for any and all training-related expenses for those who do not complete training or who do not complete a qualifying retention period following training. Contractor’s representative stated that at no time did they receive payment for any trainees enrolled in this ETP Agreement. Additionally, ETP Auditor found no evidence that any trainees reimbursed Computer Tutor for any fees, tuition, or books/supplies.

Recommendation

In the future, Computer Tutor should remove any reference to potential liability of trainees for ETP-funded training. Additionally, Computer Tutor must submit any proposed trainee Enrollment Agreement to its ETP Contract Analyst for review and approval prior to use on an ETP Agreement.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Ineligible Training Topics

Computer Tutor provided training in basic generic vocational skills that were not identified in the training curriculum and/or did not identify the specific course titles on ETP training attendance rosters. As a result, the Contractor did not comply with all Agreement requirements. Future instances of training in ineligible training topics may result in repayment of unearned funds, plus applicable interest to ETP.

The following criteria are applicable:

- Title 22 California Code of Regulations (CCR), Section 4406, New Hire Training, states in part “Training may include generic vocational skills such as office automation or customer service as an ancillary component of the overall curriculum for training in skills needed by a specific or specialized occupation.”
- Title 22 CCR, Section 4442(b) requires Contractors to maintain and make available records that clearly document all aspects of training. Classroom/laboratory training records must include the training date(s) and hours attended, training type, course title, and the trainer and trainee's signatures.
- Exhibit A, paragraph VI. A. of the Agreement states, “Contractor shall provide training pursuant to the curriculum in Exhibit B.”
- ETP 30-Day Monitoring Visit Report, dated February 6, 2003, stated that Computer Tutor “...submitted a training plan that included Keyboarding and Ten Key which are not included in your Agreement Curriculum and cannot be included as part of the ETP training... you agreed to provide Keyboarding and Ten Key as an in-kind contribution. Subsequently you resubmitted a revised training plan... [that did] not include Keyboarding and Ten Key.”

Training was requested to place unemployed individuals into Administrative Accounting Clerk and Medical Office Clerk positions. The ETP Curriculum in Exhibit B, identified training topics in two general areas, Business Skills and Computer Skills, which included topics needed for these specialized occupations. The curriculum identified several specific training modules within these categories. For instance, Computer Skills had topics in “Computerized Scheduling, Computerized Accounting/Medical Billing, Word Processing in a Medical Office/for the Accounting Clerk, etc.”

ETP Auditor reviewed multiple-day training rosters for 15 sample trainees that generally identified the following four course titles: 1) Accounting, 2) Medical, 3) Business Education, and 4) Computer

FINDINGS AND RECOMMENDATIONS (continued)

Skills. Although course titles were not typically identified on ETP training rosters, a few trainees had identified both “10-key” and “Keyboarding” as training topics received on their training rosters. ETP Auditor also conducted an interview with a placed trainee who stated that “keyboarding and 10-key were done during classes when they had free time or finished their assignments or tests early [i.e. during ETP-funded training].” Computer Tutor provided a training completion document for each of the trainees sampled that identified training requirements, which included “Ten Key – Speed Drills & Exam” and “Keyboarding I”.

Additionally, Computer Tutor stated during ETP monitoring that since they normally provide basic instruction in some generic computer skills, such as 10-key and keyboarding, these topics would be included as an in-kind contribution. Thus, these topics were intentionally not included in the curriculum for this agreement. However, due to the lack of specific training titles on the multiple-day training rosters, ETP Auditor was unable to determine how many training hours were specifically provided in 10-key and keyboarding. While no training costs are recommended to be disallowed for this finding, Computer Tutor must identify specific course titles on ETP class/lab attendance rosters or risk the loss of ETP-funding for training in ineligible courses.

Recommendation	Computer Tutor should ensure that all training rosters include required training information, including training course titles. Future instances of missing training information (course titles) or training in ineligible course topics may result in repayment of unearned funds, plus applicable interest to ETP.
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ATTACHMENT A - Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006